

Your Comment on the Taranaki VTM Project

Please include all the contact details listed below with your comments.

1. Contact Details	
Please ensure that you have authority to comment on the application on behalf of those named on this form.	
Organisation name (if relevant)	Te Rūnanga o Ngāti Ruanui Trust
First name	██████
Last name	████
Postal address	████████████████████
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Email (a valid email address enables us to communicate efficiently with you)	████████████████████

2. We will email you draft conditions of consent for your comment			
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3. Please select the effects (positive or negative) that your comments address:			
☒	Economic Effects	☒	Sedimentation and Optical Water Quality Effects
☒	Effects on Coastal Processes	☒	Benthic Ecology and Primary Productivity Effects
☒	Fished Species	☒	Seabirds
☒	Marine Mammals	☐	Noise Effects
☐	Human Health Effects of the Marine Discharge Activities	☒	Visual, Seascape and Natural Character Effects
☐	Air Quality Effects	☒	Effects on Existing Interests
☒	Other Considerations (please specify): Effects on Treaty settlement, tikanga and cultural values Legal issues		

Please provide your comments below. You may include additional pages if needed. If you are emailing this form and attaching any supporting documents, please list the names of those files below to help us ensure all materials are received.

Attached documents:

1. Affidavit of Haimona Maruera dated 1 October 2025, including exhibit 'Ngāti Ruanui – Customary Interests and Marine and Coastal Usages, A Report Commissions by Te Rūnanga o Ngāti Ruanui Trust', Dr Vincent O'Malley, October 2024
2. Affidavit of Graham John Young dated 1 October 2025.
3. Submissions of Counsel for Te Rūnanga o Ngāti Ruanui Trust dated 6 October 2025.

The Statement of Evidence of Dr Ganesh Nana filed by Te Kāhui o Rauru, but commissioned jointly with Te Rūnanga o Ngāti Ruanui and Te Korowai o Ngāruhine, should also be treated as forming part of these comments.

Thank you for your comments

BEFORE THE TARANAKI VTM PROJECT EXPERT PANEL [FTAA-2504-1048]

UNDER THE Fast-Track Approvals Act 2024

IN THE MATTER OF an application by Trans-Tasman Resources Limited
for marine consents

SUBMISSIONS OF COUNSEL FOR TE RŪNANGA O NGĀTI RUANUI

Dated 6 October 2025

Counsel for Ngāti Ruanui:

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A. INTRODUCTION

1. These submissions are filed on behalf of Te Rūnanga o Ngāti Ruanui Trust (**Te Rūnanga**) and are accompanied by affidavits from the Tumu W'akaae (Chair) of Te Rūnanga, Haimona Maruera, and a senior staff member, Graham Young (both sworn 1 October 2025). In addition, Te Rūnanga relies on the Statement of Evidence of Dr Ganesh Nana (aka Ganesh Rajaram Ahirao), dated 4 October 2025. Dr Nana's evidence was commissioned jointly by Te Rūnanga, Te Kaahui o Rauru and Te Korowai o Ngāruahine.
2. Te Rūnanga is the mandated voice for the 16 hapū and more than 12,000 registered uri (descendants) that comprise Ngāti Ruanui. The takiwā (tribal region) of Ngāti Ruanui is bounded by the Whenuakura River in the South and the Waingongoro River in the North. It extends inland to the east to the Matemateonga Ranges and seaward into the moana.

Overview of evidence

3. The evidence of Mr Maruera briefly summarises the origins of Ngāti Ruanui as an iwi and the devastating history of colonisation, confiscation and brutality that its people were subjected to. A report prepared by Dr Vincent O'Malley for the purposes of the applications by Te Rūnanga under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACAA**) is annexed to Mr Maruera's affidavit. That report addresses iwi history in more detail, with particular reference to the connections between Ngāti Ruanui and its rohe moana.
4. Mr Maruera's evidence goes on to address Ngāti Ruanui concepts of kaitiakitanga and other relevant elements of tikanga and comment on the likely effects of the proposed activity on Ngāti Ruanui through a tikanga lens. The evidence uses findings of the 2017 Decision-Making Committee (**DMC**)¹ under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (the **EEZ Act**) as indicative of the likely physical effects of the activity, from which impacts on tikanga can be deduced. While the present application is proceeding under a different statute, it remains the case that the 2017 Committee is the only decision-making body, to date, to have heard and drawn conclusions from

¹ Environmental Protection Authority *Decision on Marine Consents and Marine Discharge Consents Application, Trans-Tasman Resources Limited, Extracting and processing iron sand within the South Taranaki Bight*, Application EEZ000011, August 2017 (**DMC decision**).

the evidence on environmental effects provided from a wide range of experts.

5. The evidence of Mr Young provides the perspective of Te Rūnanga on its long, and often fraught, history of engagement with this application and those that preceded it, from 2011. The evidence goes on to provide a brief summary of the likely effects of the proposed activity, annexing a detailed report analysing the evidence, as it stood in 2017. Given that the evidence provided by Trans-Tasman Resources Limited (**TTR**) largely remains unchanged, that analysis remains relevant. Equally, the report illustrates the effort Te Rūnanga has made to engage with the issues raised by this application, and the resources devoted to that effort. Finally, Mr Young's evidence highlights the Crown's apology to Ngāti Ruanui, contained in the Ngāti Ruanui Deed of Settlement of 12 May 2001 (**the Deed of Settlement**)² and ss 9-10 of the Ngati Ruanui Claims Settlement Act 2003 (**the Settlement Act**). The relevance of the Ngāti Ruanui settlement is addressed from paragraph 39 below.
6. Finally, in his evidence, Dr Nana comments on the multiplier model relied on by TTR, highlighting its limitations and some apparent errors. After providing a brief overview of the District and Regional Economy – and the Māori Economy that forms part of that – Dr Nana introduces a more holistic approach to assessing the benefits (or otherwise) of a project such as this, through the Total Economic Value methodology, which recognises a broader perspective of 'value', including the value of not using a resource.

These submissions

7. These submissions address the significant legal issues raised by this application under three broad headings:
 - (a) Section B – Te Tiriti o Waitangi and Tikanga: the relevance and application of Te Tiriti and tikanga, including s 7 of the Fast-Track Approvals Act 2024 (**the FTAA**);
 - (b) Section C – Decision-making Criteria: the general approach to the considerations set out in cl 6(1), sch 10 of the FTAA and the application, the purpose of the FTAA and the

² Deed of Settlement of the Historical Claims of Ngaati Ruanui, 12 May 2001. Filed by TTR on 9 September 2025 as "Footnote Document FN255".

considerations – including environmental bottom lines – flowing from the EEZ Act; and

- (c) Section D – Why the Application Must Be Declined: s 85 of the FTAA and its application in the present case.

B. TE TIRITI O WAITANGI AND TIKANGA

Tikanga

8. Tikanga is the first law of Aotearoa.³ It “was not displaced or extinguished by the arrival of the English common law...”⁴ It “is a part of the common law of Aotearoa/New Zealand.”⁵
9. With particular reference to this application, in *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* the Supreme Court held that tikanga qualified as “any other applicable law”, which must be taken into account by a decision-maker on a marine consent application under s 59(2)(l) of the EEZ Act.⁶
10. The Supreme Court also held that tikanga-based customary interests were “existing interests” and therefore s 59(2)(a) of the EEZ Act requires effects on them to be taken into account by a decision-maker on a marine consent.⁷ The Supreme Court held that the existing interests that needed to be considered in relation to this project were:⁸
- (a) the kaitiakitanga of iwi of their rohe;
 - (b) rights claimed or granted under the MACAA;
 - (c) interests under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.
11. The Supreme Court explained the proper approach to customary interests, emphasising the need to consider cultural and spiritual effect rather than just physical and biological ones:⁹

[160] However, despite the references to the effect of the proposal on kaitiakitanga and the mauri of the marine environment, the DMC did not effectively grapple with the true effect of this proposal for

³ *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [110] per Glazebrook J, at [172] per Winkelmann CJ.

⁴ At [172] per Winkelmann CJ.

⁵ At [116] per Glazebrook J.

⁶ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [172] per William Young and Ellen France JJ.

⁷ At [154] per William Young and Ellen France JJ.

⁸ At [154] per William Young and Ellen France JJ.

⁹ At [161] per William Young and Ellen France JJ.

the iwi parties or with how ongoing monitoring could meet the iwi parties' concern that they will be unable to exercise their kaitiakitanga to protect the mauri of the marine environment, particularly given the length of the consent and the long-term nature of the effects of the proposal on that environment.

[161] What was required was for the DMC to indicate an understanding of the nature and extent of the relevant interests, both physical and spiritual, and to identify the relevant principles of kaitiakitanga said to apply. Here, while there was some reference to spiritual aspects, the primary focus does appear to have been on physical and biological effects, for example, of the sediment plume. Further, while the DMC acknowledged there would be "some impact" on kaitiakitanga, mauri and other cultural values, that significantly underrated the effects. The DMC then needed to explain, albeit briefly, why these existing interests were outweighed by other s 59 factors, or sufficiently accommodated in other ways.

....

12. The considerations set out in s 59(2) of the EEZ Act must be taken into account by a panel considering a marine consent application under the FTAA.¹⁰ Accordingly, the Supreme Court's conclusions regarding both "any other applicable law and "existing interests" remain applicable under the FTAA.
13. While the FTAA only expressly refers to tikanga in a procedural context,¹¹ the same is true of the EEZ Act (as the Supreme Court noted).¹² This therefore provides no basis for distinguishing the Supreme Court's decision.
14. More generally, tikanga must colour the interpretation and application of the FTAA. As part of the fabric of New Zealand law, it is relevant context for the interpretation of legislation under s 10(1) of the Legislation Act 2019.
15. In the present case, the proposed activity will significantly adversely impact on the mauri of Te Moananui A Kupe and the rohe moana of Ngāti Ruanui.¹³ It is likely to have negative effects on culturally significant reefs and other fishing grounds that supply Ngāti Ruanui with mahinga kai¹⁴ and to risk other taonga species,

¹⁰ Fast-Track Approvals Act 2024, sch 10, cl 6(1)(d).

¹¹ Fast-Track Approvals Act 2024, s 58(1)(b).

¹² *Trans-Tasman Resources Ltd*, above n 6, at [163] per William Young and Ellen France JJ, citing Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, ss 53(3)(b) and 158(1)(a).

¹³ Affidavit of Haimona Maruera at [43]-[45] and elsewhere.

¹⁴ At [49]-[52] and elsewhere.

such as marine mammals, that Ngāti Ruanui are linked to through whakapapa.¹⁵

The principles of Te Tiriti o Waitangi

16. The FTAA does not contain a general Treaty clause or refer to Te Tiriti o Waitangi or its principles, beyond references to Treaty settlements.¹⁶ The s 7 ‘Treaty clause’ is limited to requiring persons exercising functions, powers and duties under the Act to act consistently with Treaty settlements and recognised customary rights (under MACAA).
17. However, the Supreme Court held that the principles of Te Tiriti were “directly relevant” when deciding on an application for a marine consent under the EEZ Act.¹⁷ It was an error of law to say merely that they “colour” the approach taken.¹⁸ The principles are equally relevant to an expert panel appointed under the FTAA that is considering an application for a marine consent.
18. Additionally, it is well-established that Te Tiriti and its principles are relevant to the interpretation and application of statutory provisions even when not referred to in legislation or only in a Treaty clause that is limited in scope. This is because “the Treaty is part of the fabric of New Zealand society”¹⁹ and “has an elevated status owing to its constitutionally-foundational significance.”²⁰ As a Full Court of the High Court said in *Barton-Prescott v Director-General of Social Welfare*:²¹

We are of the view that since the Treaty of Waitangi was designed to have general application, that general application must colour all matters to which it has relevance, whether public or private and that for the purposes of interpretation of statutes, it will have a direct bearing whether or not there is a reference to the treaty in the statute.
19. The presumption of consistency with Te Tiriti is a powerful one. In *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* the Supreme Court said that “[a]n intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made

¹⁵ At [55]-[56].

¹⁶ Fast-Track Approvals Act 2024, ss 7, 16, 18, 82 and 84.

¹⁷ *Trans-Tasman Resources Ltd*, above n 6, at [161] per William Young and Ellen France JJ.

¹⁸ At [161] per William Young and Ellen France JJ.

¹⁹ *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 210.

²⁰ *Tukaki v Commonwealth of Australia* [2018] NZCA 324, [2018] NZAR 1597 at [35].

²¹ *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179 (HC) at 184.

quite clear.”²² The Court also said that Treaty clauses “must be given a broad and generous construction.”²³

20. Nothing in the FTAA demonstrates a clear parliamentary intention to constrain the obligation of expert panels to respect Te Tiriti and its principles. If Parliament had wished to do so, it could easily have expressly provided for such limits.²⁴ In the absence of such provision, the consistency of an application with Te Tiriti remains relevant.
21. The constitutional significance of Te Tiriti means that effects that would be inconsistent with Te Tiriti or its principles must have particular weight in assessing an application. Parliament should not be presumed to have intended that the Crown’s obligations under Te Tiriti and its guarantees to iwi in Art 2 should be lightly set aside.
22. The principle of active protection is particularly relevant in this context. Article 2 of Te Tiriti o Waitangi guarantees Māori “*rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa*” (“unqualified exercise of their chieftainship over their lands, villages and all their treasures”).²⁵ In the English text the guarantee is of “the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties”.
23. The principle of active protection means that “the duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and **waters** to the fullest extent practicable.”²⁶
24. The Privy Council has explained that where:²⁷

...a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations. This may well require the Crown to take especially

²² *Trans-Tasman Resources Ltd*, above n 6, per William Young and Ellen France JJ.

²³ At [151] per William Young and Ellen France JJ.

²⁴ As it may do, for example, in the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill where certain key provisions are to be interpreted in a specified manner which is expressed as ‘prevailing over’ the Treaty clause and purpose of the primary statute (see cl 5 of the Amendment Bill as reported back from Select Committee, inserting a new s 9B).

²⁵ As translated by Professor Sir Hugh Kawharu in a translation widely used by the Waitangi Tribunal and first published in Michael Belgrave, Merata Kawharu and David Williams (eds) *Waitangi Revisited: Perspectives on the Treaty of Waitangi*, (Oxford University Press, South Melbourne, 1989).

²⁶ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) (*Lands case*) at 664 per Cooke P (emphasis added).

²⁷ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC) (*Broadcasting Assets case*) at 517.

vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches of the Crown of its obligations, and may extend to the situation where those breaches are due to legislative action.

25. In this case, by granting the consents, the Crown would be failing in its obligation to take steps to enable Ngāti Ruanui to use and exercise its kaitiaki responsibilities in its rohe moana. This would compound the Crown's history of failing to recognise and protect the Iwi parties' respective kaitiaki responsibilities through land confiscation, failing to respect customary fishing and other customary activities, failing to recognise sites of customary significance, and refusal to recognise the rangatiratanga each iwi holds over the sea where it has mana moana. These failings are detailed in the report of Dr Vincent O'Malley²⁸ and the historical account and acknowledgements by the Crown set out in parts 6 and 7 of the Deed of Settlement.
26. The principles of Te Tiriti also include the express terms of Te Tiriti, as the Privy Council stated in the *Broadcasting Assets case*,²⁹ so a breach of the Art 2 rights of iwi to tino rangatiratanga over their taonga will also breach the principles of Te Tiriti.
27. In *Ngāti Kuku Hau Trust v Environmental Protection Authority* Boldt J said of decision-makers under the FTAA: "Nor are they required to consider the principles of the Treaty."³⁰ However, his Honour was referring to the lack of any statutory provision in the Act regarding the principles of the Treaty, as part of a general description of the statutory framework. He was not addressing the distinct issue of the relevance of te Tiriti where it is not referred to in a statute, as that was not the issue before him. As such, this case is not authority for the proposition that te Tiriti is irrelevant to the consideration of applications under the FTAA.

Section 7 – General Approach

28. Section 7(1) of the FTAA provides:

All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

- (a) the obligations arising under existing Treaty settlements; and
- (b) customary rights recognised under—

²⁸ Exhibit 'HCMM-1' to the affidavit of Haimona Maruera.

²⁹ At 517.

³⁰ *Ngāti Kuku Hau Trust v Environmental Protection Authority* [2025] NZHC 2453 at [65]

- (i) the Marine and Coastal Area (Takutai Moana) Act 2011;
 - (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- 29. “Treaty settlement” is defined in s 4(1) as meaning “(a) a Treaty settlement Act; or (b) a Treaty settlement deed”.
- 30. Section 7(2) states: “To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.”
- 31. Section 85(1)(b) provides that “[t]he panel must decline an approval if ... the panel considers that granting the approval would breach section 7...”
- 32. While in some contexts the panel might be regarded as performing a judicial function, s 85(1)(b) makes clear that s 7(2) was not intended to apply to the panel. If the s 7(1) obligation were excluded from applying to the panel by s 7(2), then s 85(1)(b) could have no application.³¹ It appears likely that s 7(2) was intended to apply to courts considering appeals under the FTAA, as the judiciary has raised constitution concerns regarding the application of Treaty clauses to courts.³²
- 33. The Bledisloe North Wharf and Fergusson North Berth (**Bledisloe North Wharf**) expert panel, while describing the legislation as ambiguous, concluded that s 7(2) did not apply to an expert panel.³³
- 34. If any doubt remains regarding the interpretation of s 7(2), the interpretative presumption in favour of interpreting legislation consistency with Te Tiriti and its principles should resolve the question in favour of an interpretation that excludes the panel from the scope of s 7(2).

Section 7(1)(a) – applications under MACAA

- 35. The Supreme Court found that customary rights for which recognition has been sought under MACAA are tikanga-based

³¹ The Bledisloe North Wharf and Fergusson North Berth expert panel noted this issue, but found it unnecessary to resolve it: Record of Decisions of the Expert Panel under Section 87 of the Fast-Track Approvals Act 2024, Bledisloe North Wharf and Fergusson North Berth [FTAA-2503-1028] Expert Panel, 21 August 2025 [**Bledisloe North Wharf**] at [110].

³² Dame Helen Winkelmann, Chief Justice of New Zealand “Submission to the Environment Committee on the Natural and Built Environment Bill 2022” at 2-3.

³³ Bledisloe North Wharf, above n 31, at [110].

rights, covered by the guarantee of tino rangatiratanga contained in art 2 of Te Tiriti. As such, they may be existing interests, as referred to in s 59(2)(a) of the EEZ Act. The point is that the grant of recognition orders under MACAA does not create rights, it merely recognises pre-existing, Tiriti-guaranteed rights.

36. In this case, Ngāti Ruanui filed applications seeking recognition of its rights under MACAA in 2017. Those applications were set down for hearing in early 2025, but the hearing had to be adjourned due to uncertainties created by the Crown's proposal to amend MACAA with retrospective effect: Ngāti Ruanui and other MACAA applicants faced the prospect that any hearing would be rendered null and void by those amendments.³⁴
37. But for that adjournment, it could well be that Ngāti Ruanui would, by now, have had its rights recognised under MACAA. Had that been the case, the panel and others performing and exercising functions, powers and duties under the FTAA would be bound to act in a manner that is consistent with those rights. More to the point, the TTR proposal would be an "ineligible activity" under s 5(1)(b) of the Act.
38. While the panel is obviously bound to give effect to the distinction the FTAA draws between recognised and unrecognised rights in the takutai moana, it is a distinction that is largely arbitrary, as the case of Ngāti Ruanui demonstrates.

Treaty settlements

39. As with s 7 itself, Treaty settlements should be interpreted broadly and generously. The presumption favouring an interpretation that is consistent with Te Tiriti and its principles is relevant here.
40. Treaty settlements have a two-fold function:
 - (a) first, resolving and remedying historical breaches of Te Tiriti and its principles through the acknowledgement of those breaches and provision of redress;
 - (b) secondly, providing for an ongoing relationship between the iwi and the Crown that will uphold Te Tiriti and its principles.
41. As such, Treaty settlements should be interpreted in a way that gives effects to the Crown's ongoing obligations under art 2 of Te

³⁴ Affidavit of Graham John Young at [16].

Tiriti and the principles of Te Tiriti. While any Treaty settlement leaves the Crown free to exercise its responsibilities of Kawanatanga, it is not to be supposed that the parties to such settlements intended that the Crown should be free to continue to breach its Treaty obligations to iwi. That would be inconsistent with the Treaty principle of good faith that settlements are based on.

42. Each Treaty settlement is therefore more than a ‘shopping list’ of mechanisms to be implemented. It is a compact between Treaty partners, in which the spirit and intent – the nature of the new relationship the parties say they wish to forge – is just as important as the mechanics, if not more so.
43. In his evidence, Mr Young highlights the Crown apology to Ngāti Ruanui, which concludes:

Accordingly, the Crown seeks to atone for these wrongs, and to begin the process of healing with the Settlement, and **looks forward to building a relationship of mutual trust and co-operation with Ngāti Ruanui.**

(Emphasis added)

44. Mr Young expresses the view that granting TTR the approvals sought would be wholly at odds with a relationship characterised by “mutual trust and co-operation”.³⁵
45. Beyond that broad conception of commitments made in a Treaty settlement, there are specific elements of the Ngāti Ruanui settlement impacted by this application. Of these, TTR appears to acknowledge only the statutory acknowledgement of Ngāti Ruanui interests over ‘Te Moananui A Kupe O Ngāti Ruanui (coastal area)’, which its application describes as:³⁶

...the coastal area between the Waingongoro River and the Whenuakura River. The project area is located approximately 12NMto [sic] east of the Ngāti Ruanui statutory acknowledgement area.

46. Given that the proposed mining area abuts the 12NM limit of coastal marine area (**CMA**), this analysis seems to limit the application of the statutory acknowledgement to precisely none of

³⁵ Affidavit of Graham John Young at [48].

³⁶ Trans-Tasman Resources Ltd “Taranaki VTM Project: Fast-Track Act Application”, 15 April 2025 [TTR application] at 107.

the CMA. Moreover, as the application acknowledges,³⁷ the sediment plume (and likely other effects of the activity) will extend well into the CMA.

47. The SO plan that depicts the coastal area to which the statutory acknowledgement applies is replicated below for convenience).³⁸

3.1 STATUTORY ACKNOWLEDGEMENT FOR TE MOANANUI A KUPE O NGATI RUANUI SO 14739



48. The plan clearly indicates the northern and southern boundary points of the relevant area, being the Waingongoro River and the Whenuakura River. It does not appear that the arc drawn between the two points is intended to mark the seaward boundary of that area, however.
49. The statutory acknowledgment is a mechanism that primarily relates to planning and decision-making under the Resource Management Act 1991 (**RMA**). A better understanding of the area covered by the statutory acknowledgement is therefore that it applies to the area of the CMA (the area subject to the RMA) that lies between the northern and southern points.
50. Section 89 of the Settlement Act sets out the purposes of statutory acknowledgements, key among which is a requirement for consent authorities (under the RMA) to have regard to those acknowledgements. Section 104 tightly constrains that purpose, providing:

³⁷ At 106.

³⁸ This image is taken from the Taranaki Regional Coastal Plan.

Exercise of powers, functions, and duties not affected

- (1) Except as expressly provided in sections 89 to 92, 95, 97, and 98,—
 - (a) neither a statutory acknowledgement nor a deed of recognition affects, or may be taken into account by, a person exercising a power or performing a function or duty under a statute, regulation, or bylaw:
 - (b) no person, in considering a matter or making a decision or recommendation under a statute, regulation, or bylaw, may give greater or lesser weight to the association of Ngāti Ruanui with a statutory area (as described in the relevant statutory acknowledgement) than that person would give under the relevant statute, regulation, or bylaw if no statutory acknowledgement or deed of recognition existed in respect of the statutory area.
51. However, the statutory acknowledgement is still relevant context in understanding Ngāti Ruanui's interests and rights in this area.
52. The Ngāti Ruanui settlement also contains a number of measures relevant to fisheries that could be impacted by the TTR proposal:
- (a) A 'Fisheries Protocol' issued by the Minister of Fisheries, which sets out how the Ministry of Fisheries will interact with Ngāti Ruanui so as to enable Ngāti Ruanui to provide input to the Ministry in a range of processes.³⁹
 - (b) Appointment of Te Rūnanga as an advisory committee to the Minister of Fisheries under s 21 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995, to provide advice to the Minister on all matters relevant to the purpose of the Fisheries Act 1996.⁴⁰
 - (c) A statement of the association of Ngāti Ruanui with 'Nga Taonga o Taane raua ko Tangaroa',⁴¹ which reads:⁴²

³⁹ Deed of Settlement of the Historical Claims of Ngaati Ruanui, above n 2, at sch 2, part 1. A similar Protocol was to be issued by the Minister of Energy with respect to their functions under the Crown Minerals Act 1991.

⁴⁰ At [9.1.20](a).

⁴¹ In addition to terrestrial indigenous species, this is expressed as encompassing "fish and aquatic life" found within the Fisheries Protocol Area and managed by the Ministry of Fisheries. The Fisheries Protocol Area is expressed to extend to "adjacent waters" to the land shown on the map (which includes the land adjacent to the project area). "Adjacent waters" should be given a broad interpretation in order to give effect to the rights guaranteed to Ngāti Ruanui under art 2 of te Tiriti. It should not be limited merely to waters close to shore, given that Ngāti Ruanui's rohe and kaitiaki responsibilities extend further out.

⁴² Ngāti Ruanui Claims Settlement Act 2003, sch 11, part 1.

The whaikorero (oral history) of our tupuna of old and now honoured by each generation thereafter places the utmost importance on the role of Ngati Ruanui as kaitiakitanga (guardians) for all the life forms of the environment Ngati Ruanui have always believed that the environment including all indigenous species of fish, flora and fauna are inter-related through whakapapa and all are precious to Ngati Ruanui. All species are important and all play their particular role within the environment. The integration of all species in the environment is woven within the holistic pattern of life itself. Ngati Ruanui as a people are part and parcel of the environment itself.

Ngati Ruanui recognise that any negative effects on one species may cause ill effects for other species. Ngati Ruanui continue to maintain a kaitiaki (guardian) role to look after all species within our environment.

The mauri (life force) of all species is important to Ngati Ruanui, the essence that binds the physical and spiritual elements of all things together, generating and upholding all life. All species of the natural environment possess a life force and all forms of life are related.

- (d) A Crown acknowledgement that Ngāti Ruanui has a “customary non-commercial interest” in the pāua fishery of the Fisheries Protocol Area.⁴³
- (e) A prohibition on the commercial taking from the Fisheries Protocol Area of a number of shellfish species, namely kuku/kutae (greenlipped mussels and blue mussels), pīhārau (lamprey), pipi, waikaka (mudsnail), pupu (catseye), kina and waikōura (freshwater crayfish).⁴⁴
- (f) Provision for Ngāti Ruanui to participate in regulatory review processes with respect to fisheries resources, including consideration of any proposal from Te Rūnanga for a prohibition on the commercial use of trawl nets and set nets in the any part of the Fisheries Protocol Area.⁴⁵
- (g) Particular consideration of a request by Te Rūnanga to take and relocate undersized tuna (eels), i.e. elvers or glass eels to waterways or aquaculture facilities within the Fisheries Protocol Area.⁴⁶

⁴³ Ngati Ruanui Claims Settlement Act 2003, s 112.

⁴⁴ Deed of Settlement of the Historical Claims of Ngaati Ruanui, above n 2, at sch 2, part 1, cl 5.3.

⁴⁵ Clause 9.6.4 and sch 2, part 1, cl 6.1.

⁴⁶ Sch 2, part 1, cl 5.7.

- (h) A right of first refusal for Te Rūnanga in relation to any sales by the Crown of Individual Transferable Quota for kina or purimu (surf clams).⁴⁷
53. In addition, the settlement gave Te Rūnanga a preferential right to purchase a percentage of authorisations for the occupation of space in the CMA, should the Crown seek to utilise the Coastal Tendering provisions of the RMA.⁴⁸
54. From this brief summary, it is clear that the management of fisheries and other matters within the coastal rohe of Ngāti Ruanui were of significant concern to those that negotiated the settlement. The result is a large number of settlement mechanisms, the intent and efficacy of which could be adversely impacted by the effects of the TTR proposal, if approval is granted for it.
55. It would be inconsistent with the Crown's obligation under the Ngāti Ruanui settlement to allow the approval of a project that would risk the effective operation of these settlement mechanisms. The approval of the project would therefore be inconsistent with s 7(1) of the FTAA.
56. Te Ohu Kaimoana has identified that the TTR proposal would breach the Fisheries Settlement because of the risks it poses to customary fish stocks and pātaka,⁴⁹ iwi settlement quota⁵⁰ and Moana New Zealand (the largest Māori-owned fisheries company in Aotearoa).⁵¹ Again, this means that approval of the project would be inconsistent with s 7(1) of the FTAA.
57. Te Ohu Kaimoana also notes that broader engagement with iwi is necessary to determine whether the project would have negative impacts on Māori aquaculture interests under the Māori Commercial Aquaculture Claims Settlement Act 2004.⁵² This means that there is inadequate information to assess whether the project would be inconsistent with the aquaculture settlement and whether approval of it would be inconsistent with s 7(1) of the FTAA in relation to that settlement.

⁴⁷ Sch 2, part 1, cl 9.7.

⁴⁸ Ngāti Ruanui Claims Settlement Act 2003, s 119.

⁴⁹ Te Ohu Kaimoana "Response to the Taranaki VTM Project – Fast Track Approvals Application" (September 2025) at [47].

⁵⁰ At [60].

⁵¹ At [65].

⁵² At [72].

C. DECISION-MAKING CRITERIA

General approach

58. The factors that the panel must take into account when considering an application for a marine consent are set out in cl 6(1) of sch 10:
- (a) the purpose of the FTAA; and
 - (b) ss 10 and 11 of the EEZ Act; and
 - (c) any relevant policy statements issued under the EEZ Act; and
 - (d) ss 59, 60, 61(1)(b) and (c) and (2) to (5), 62(1A) and (2), 63, and 64 to 67 of the EEZ Act.
59. Section 81(4) requires the panel to “consider the extent of the project’s regional or national benefits” when taking the purpose of the FTAA into account.
60. The matters set out in set out in cl 6(1) of sch 10 are all mandatory relevant considerations that “the panel must take into account, giving the greatest weight to” the purpose of the FTAA.⁵³
61. In *Enterprise Miramar Peninsula Inc v Wellington City Council* the Court of Appeal considered the interpretation of similar statutory language regarding giving greater weight to particular considerations. This was in the context of Housing Accords and Special Housing Areas Act 2013 (**HASHAA**). Section 34(1) of HASHAA provided:
- An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:
- (a) the purpose of this Act:
 - (b) the matters in Part 2 of the Resource Management Act 1991:
 - (c) any relevant proposed plan:
 - (d) the other matters that would arise for consideration under—
 - (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:

⁵³ Fast-Track Approvals Act 2024, sch 10, cl 6(1).

- (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
- (e) the key urban design qualities expressed in the Ministry for the Environment's New Zealand Urban Design Protocol (2005) and any subsequent editions of that document.

62. The Court of Appeal stated:⁵⁴

[41] The plain words indicate, therefore, that greatest weight is to be placed on the purpose of HASHAA, namely enhancing affordable housing supply in certain districts. That said, other considerations have been deliberately included. Decision-makers must be careful not to rely solely on the purpose of HASHAA at the expense of due consideration of the matters listed in paras (b)–(e).

63. The Court explained the proper approach as follows:⁵⁵

[52] We accept the submission for Enterprise that, properly interpreted, s 34(1) required the decision-maker to assess the matters listed in subs (1)(b)–(e) uninfluenced by the purpose of HASHAA before standing back and conducting an overall balancing.

[53] Section 34(1) instructs the decision-maker to “have regard to” the listed matters “giving weight to them (greater or lesser) in the order listed”. The scheme and plain text of s 34(1) requires individual assessment of the listed matters prior to the exercise of weighing them in accordance with the prescribed hierarchy. The matters listed in subs (1)(b)–(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)–(e).

[54] We accept that, under HASHAA, ss 104–104F of the RMA do not directly apply, therefore a development that could not proceed under those provisions of the RMA could still be consented under s 34 of the HASHAA. However, those RMA provisions are still mandatory considerations under s 34(1)(d)(i), and cannot be neutralised by reference to the purpose of HASHAA. We also note the instruction in s 34(1)(d)(i) to consider the matters that arise under ss 104–104F of the RMA “were the application being assessed under that Act”. The Council’s approach, which considered the matters in ss 104–104F of the RMA by reference to HASHAA, is inconsistent with that instruction.

[55] Moreover, we agree with the submission for Enterprise that the purpose of HASHAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purposes of HASHAA. What

⁵⁴ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, [2019] 2 NZLR 501 at [41].

⁵⁵ At [52]–[55].

changes under HASHAA is the weight to be placed on those more than minor effects. They may be outweighed by the purpose of enhancing affordable housing supply, or they may not.

64. The decision of the Bledisloe North Wharf expert panel provides a helpful summary of the *Enterprise Miramar* approach, adapted to the FTAA context:⁵⁶
- (a) While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): *Enterprise Miramar*, at [41].
 - (b) Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: *Enterprise Miramar*, at [52] – [53].
 - (c) The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: *Enterprise Miramar*, at [55].
65. The same summary was adopted by the Milldale expert panel in its draft decision.⁵⁷
66. The Bledisloe North Wharf panel noted that the difference between HASHAA and the FTAA was that all criteria under the FTAA except the first have equal weight, whereas under HASHAA all criteria were ranked in descending order of weight. But, apart from that distinction, it considered the approach in *Enterprise Miramar* to be applicable under the FTAA.⁵⁸
67. The Maitahi Village expert panel did not find reference to HASHAA helpful,⁵⁹ but accepted “that a statutory requirement such as that in clause 17(1) Schedule 5 to give greatest weight to the purpose

⁵⁶ Bledisloe North Wharf, above n 31, at [121].

⁵⁷ Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024, Milldale Expert Panel, 3 October 2025 at [60].

⁵⁸ At [121].

⁵⁹ Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024, Maitahi Village Expert Panel, 18 September 2025 at [69].

of an Act, does not mean that it will always outweigh other considerations.”⁶⁰

68. In *Ngāti Kuku Hau Trust v Environmental Protection Authority* Boldt J said: “In enacting the FTA, Parliament made a deliberate decision to de-emphasise factors which might militate against approval.”⁶¹ However, this was a general comment regarding the framework of the FTAA and not a comment on how particular considerations that the FTAA requires expert panels to take into account should be approached.
69. The Bledisloe North Wharf panel also stated that it understood ‘the phrase “take into account” as requiring [it] to directly consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside’,⁶² citing the Supreme Court’s judgment regarding the East-West Link in *Royal Forest and Bird Protection Society Inc v New Zealand Transport Agency*.⁶³ There is other case law on the phrase “take into account” under the Resource Management Act and other statutes, but this is the most relevant and up-to-date articulation of its requirements in the context of the FTAA.
70. The following guidance can be drawn from these decisions:
- (a) the purpose of the FTAA has the greatest weight;
 - (b) the panel must not rely solely on it, however, at the expense of other considerations;
 - (c) all the matters set out in cl 6(1) of sch 10 must be given direct and genuine consideration;
 - (d) each matter should be considered on an individual basis;
 - (e) the various matters must then be weighed in forming an overall conclusion;
 - (f) the purpose of the FTAA is not relevant to assessing environmental effects.
71. In setting out the considerations in cl 6(1) of sch 10, Parliament clearly contemplated that all of them would be relevant to decisions on whether to grant approvals. If the purpose of the

⁶⁰ At [70].

⁶¹ *Ngāti Kuku Hau Trust*, above n 30, at [66].

⁶² Bledisloe North Wharf, above n 31, at [20].

⁶³ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241.

FTAA overrode everything else, there would be no point in having the other considerations. As TTR states in its application, ‘the terms of clause 6 of schedule 10 do not require the FTA purpose to be achieved (it is to be “taken into account”)...’⁶⁴

72. As such, the other considerations must be capable of outweighing the purpose of the FTAA. This analysis is consistent with the guidance from *Enterprise Miramar* and the Bledisloe North Wharf decision.

Purpose of the FTAA

73. The purpose of the FTAA “is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”⁶⁵ This is done by providing a streamlined consenting process for such projects. As TTR acknowledges, “the purpose provision is not intended to compel the granting of approval in all cases.”⁶⁶
74. Dr Ganesh Nana points out that the TTR application is not supported by any evidence of the proposal having a **net** economic benefit at all, let alone a significant benefit:

The Economic Effects assessed by the multiplier model and presented in Section 5.2 of the application are undoubtedly **illustrative** of the **gross** economic impact. They fall short of any assessment of net economic impact, even when viewed from a *produce and spend* perspective on economic activity and objectives.

...

Consequently, Section 5.2 and the NZIER study **should not be used** as providing sufficient evidence of significant regional or national benefits arising from the *Taranaki VTM Project*.⁶⁷

(emphasis in original)

75. Moreover:

The **lack of a convincingly positive legacy** – as would be expected for an infrastructure and development project yielding significant regional or national benefits – in terms of business, employment, or

⁶⁴ TTR application, above n 36, at 312.

⁶⁵ Fast-Track Approvals Act 2024, s 3.

⁶⁶ TTR application, above n 36, at 313.

⁶⁷ Statement of Evidence of Dr Ganesh Nana (aka Ganesh Rajaram Ahirao) for Te Kaahui o Rauru, Te Rūnanga o Ngāti Ruanui and Te Korowai of Ngāruahine, paragraphs 75 and 78. Note that Dr Nana contrasts the simplistic ‘produce and spend’ model for assessing economic impact with the more holistic ‘Total Economic Value’ approach.

income opportunities, or a more balanced economic structure, is similarly absent from the analysis.⁶⁸

Section 10 of the EEZ Act and environmental bottom lines

76. Section 10(1)(b) of the EEZ Act states that the purpose of the Act is, inter alia, “to protect the environment from pollution by regulating or prohibiting the discharge of harmful substances and the dumping or incineration of waste or other matter.”
77. The Supreme Court interpreted this as an environmental bottom-line⁶⁹ requiring protection of the environment from material harm.⁷⁰
78. The threshold of material harm is not a high one. Winkelmann CJ equated “immaterial” to “insignificant”.⁷¹ Her Honour continued:⁷²
- ... Whether harm is material in any one case will require assessment of a multiplicity of factors, such as the volume of the harmful substance discharged into the expanse of the sea, the flora, fauna and natural characteristics of the area of seabed affected, the size of seabed or volume of water affected, and the time for which the damage will last. There are therefore qualitative, temporal, quantitative and spatial aspects to materiality that have to be weighed. ... Consideration must be given to the impact of the discharge upon the marine ecosystem when assessing what is to be adjudged a material level of harm. Consideration must also be given to the impact upon those who depend upon that ecosystem – s 59(2)(a) and (b) require any effects on existing interests of allowing the activity to be taken into account.
79. Material harm does not need to be permanent; it can be temporary.⁷³ The longer the timeframe before the harm is remediated, the less likely that the harm is immaterial.⁷⁴ Harm that occurs over a longer timeframe will also make it more difficult for the decision-maker to be satisfied that remediation will in fact occur, given the requirement to favour caution and environmental protection.⁷⁵

⁶⁸ Evidence of Dr Nana at paragraph 77.

⁶⁹ *Trans-Tasman Resources Ltd*, above n 6, at [245] per Glazebrook J, at [292] per Williams J, at [305] per Winkelmann CJ.

⁷⁰ At [252] per Glazebrook J, at [292] per Williams J, at [308] per Winkelmann CJ.

⁷¹ At [308] per Winkelmann CJ.

⁷² At [310] per Winkelmann CJ.

⁷³ At [252] per Glazebrook J.

⁷⁴ At [257] and [258] per Glazebrook J.

⁷⁵ At [258] per Glazebrook J.

80. Harm can be immaterial because it is mitigated or remedied, as well as avoided,⁷⁶ but the mitigation must be sufficient to reduce it to the level of being immaterial.⁷⁷ So, too, remediation must occur within a sufficiently short time period to render the harm immaterial.⁷⁸
81. Spiritual effects based on tikanga can qualify as material harm, just as physical effects can.⁷⁹
82. The Supreme Court also held that the New Zealand Coastal Policy Statement (**NZCPS**) contained an environmental bottom line and consent could not be granted if this would be inconsistent with it.⁸⁰ This bottom line arose from policy 13(1)(a) of the NZCPS, which directed local authorities to “avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character” in order to “preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development”.⁸¹ The Court said that this requirement could not be outweighed by other factors because that would be inconsistent with purpose provision in s 10 of the EEZ Act.
83. Under cl 6 of sch 10 of the FTAA, s 10 of the EEZ is a matter that the panel must take into account when considering an application for a marine consent. As such, the panel is not precluded from granting an approval for an activity that is inconsistent with s 10.
84. However, the fact that s 10 provides for an environmental bottom line means that adverse impacts that are inconsistent with it should be given particular weight. By imposing an environmental bottom line, Parliament has indicated that protecting the environment in the EEZ from material harm is particularly important.

Section 11 of the EEZ Act – New Zealand’s International Obligations

85. Section 11 of the EEZ Act provides:

⁷⁶ At [254] per Glazebrook J.

⁷⁷ At [256] per Glazebrook J.

⁷⁸ At [256] per Glazebrook J.

⁷⁹ At [172] per William Young and Ellen France JJ.

⁸⁰ At [280] per Glazebrook J.

⁸¹ At [185] per William Young and Ellen France JJ.

This Act continues or enables the implementation of New Zealand's obligations under various international conventions relating to the marine environment, including—

- (a) the United Nations Convention on the Law of the Sea 1982:
- (b) the Convention on Biological Diversity 1992:
- (c) the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL):
- (d) the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, 1972 (the London Convention).

86. The Supreme Court said that these international obligations, inform the interpretation of the EEZ Act.⁸² In particular, they reflect and reinforce the environmental bottom line that the Supreme Court held s 10(1)(b) to create.⁸³
87. Section 11 adds to the weight of s 10 and the environmental bottom line it creates under the EEZ Act. Even if the purpose of the EEZ Act does not act as an absolute bottom line under the FTAA, the panel should be very slow to grant approval to a project that would put New Zealand in breach of its international obligations. It is a presumption of statutory interpretation that Parliament intends to legislate consistently with our international obligations.⁸⁴

Section 59(2)(a) and (b) of the EEZ Act – effects on existing interests

88. Section 59 of the EEZ Act sets out the various criteria that must be taken into account when considering an application for a marine consent. Those of particular significance to Ngāti Ruanui are briefly addressed below.
89. Section 59(2)(a) sets out the first criterion:
- any effects on the environment or existing interests of allowing the activity, including—
- (i) cumulative effects; and
 - (ii) effects that may occur in New Zealand or in the waters above or beyond the continental shelf beyond the outer limits of the exclusive economic zone...

⁸² At [101] per William Young and Ellen France JJ, [246] fn 398 per Glazebrook J.

⁸³ At [246] and fn 398 per Glazebrook J.

⁸⁴ *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [32]; *Helu v Immigration and Protection Tribunal* [2015] NZSC 28, [2016] 1 NZLR 298 at [143] per McGrath J.

90. The 2017 DMC majority said that the TTR proposal would have significant effects on the tikanga and kaitiaki responsibilities of Ngāti Ruanui:⁸⁵
- (a) We acknowledge there will be significant impact on kaitiakitanga, mauri, or other cultural values. A significant physical area will be affected, either within the mining site itself, or through the effects of elevated SSC in the discharge. Iwi identified other relevant effects such as the impact of noise on marine mammals as being of concern.”⁸⁶
 - (b) “The highest levels of suspended sediment concentration will occur in the coastal marine area offshore from Ngāti Ruanui’s whenua. There will be severe effects on seabed life within 2 – 3 km of the project area and moderate effects up to 15 km from the mining activity. Most of these effects will occur within the CMA. There will be adverse effects such as avoidance by fish of those areas. Kaimoana gathering sites on nearshore reefs are likely to be subject to minor impacts given background suspended sediment concentrations nearshore.”⁸⁷
91. The Supreme Court went even further and said that the DMC majority had “significantly underrated the effects” on “kaitiakitanga, mauri and other cultural values”.⁸⁸
92. The effects on Ngāti Ruanui go beyond the physical effects and include spiritual or intangible effects:
- (a) The mauri of the ocean is negatively affected by discharges into it, so such discharges are culturally unacceptable under Ngāti Ruanui tikanga;⁸⁹
 - (b) The wairuatanga and whakapapa of the area will be affected by the mining operation;⁹⁰
 - (c) “the historic heritage, collective meanings, memories, and identities that the landscape holds for our cultural values” will be affected by the mining operation;⁹¹
 - (d) The affected areas include areas of customary significance;⁹²

⁸⁵ It is anticipated that effects on other existing interests, particular commercial and non-commercial fishing will be addressed by other parties.

⁸⁶ DMC decision, above n 1, at [727].

⁸⁷ At [724].

⁸⁸ *Trans-Tasman Resources Ltd*, above n 6, at [161] per William Young and Ellen France JJ.

⁸⁹ Affidavit of Haimona Maruera at [33] and [45]. I think this is a different naming convention to the one I used earlier

⁹⁰ At [31].

⁹¹ At [31].

- (e) The seabed mining would affect taonga species bestowed;⁹³
- (f) The seabed mining operates as a confiscation of an area that Ngāti Ruanui has mana moana over, infringing its tino rangatiratanga;⁹⁴ and
- (g) The inability of Ngāti Ruanui to perform its kaitaki responsibilities in the context of environmental harm is a further and distinct harm beyond the environmental harm.⁹⁵

Section 59(2)(d) of the EEZ Act – the importance of protecting the biological diversity and integrity of marine species, ecosystems, and processes

93. It is anticipated that a balanced view of all expert evidence provided to the panel on these matters will present quite a different picture to the impression given in the TTR application that any effects on marine species, ecosystems and processes will be highly located, minor and quickly remediated through natural processes.

Section 59(2)(e) of the EEZ Act – the importance of protecting rare and vulnerable ecosystems and the habitats of threatened species

94. TTR says “there are no ‘rare and vulnerable ecosystems’ within the project”⁹⁶ but that is disingenuous. The 2017 DMC recognised a number of ecologically sensitive areas (**ESA**) or valued ecosystem components (**VEC**) in the vicinity and discussed the effects on them. For example:

We accept that the modelling indicates that there will be significant adverse effects within ESA to the east-southeast of the mining site extending to at least Graham Bank. We accept the conclusions of Professor Cahoon that there will be significant effects on macroalgae on at least part of Graham Bank and minor effects on macroalgae at The Traps. We also accept his opinion that there will be significant effects on [Microphytobenthos] within 1 to 2 km of the mining site. Overall, we find that the effect on the primary

⁹² At [34].

⁹³ At [34].

⁹⁴ At [34].

⁹⁵ At [28] and [66].

⁹⁶ TTR Application at 330.

production of the Patea Shoals is likely to be moderate, but will be significant at ESA such as The Crack and The “Project Reef”.⁹⁷

95. The panel’s attention is also drawn to the graphic that appeared in submissions for Ngāti Ruanui, Ngā Ruaru and Te Ohu Kaimoana in the Supreme Court, which is replicated in Appendix 3 of the Supreme Court’s decision. That diagram (which is not to scale) illustrates the findings of the 2017 DMC in relation to the important reef systems within the vicinity of the TTR project area.

Section 59(2)(f) and (g) of the EEZ Act – the economic benefit to New Zealand of allowing the application and the efficient use and development of natural resources

96. These considerations are effectively encompassed by the purpose of the FTAA and the consideration required by s 85. They should not be ‘double counted’ by virtue of their inclusion in s 59 of the EEZ Act, as they are at 8.3.4 and 8.3.5 of the TTR application.

Section 59(2)(h) of the EEZ Act – the nature and effect of other marine management regimes

97. As noted in paragraph 82 above, the NZCPS is an important consideration under this heading as is the Taranaki Regional Coastal Plan. It is anticipated that the Taranaki Regional Council and other parties will address these considerations in more detail.

Section 59(2)(j) of the EEZ Act – the extent to which imposing conditions... might avoid, remedy or mitigate the adverse effects of the activity

98. Proposed conditions, such as the creation of a Kaitiakitanga Reference Group, would not remedy the adverse effects of the activity on the environment and on the existing interests of Ngāti Ruanui. As Haimona Maruera says in his affidavit:⁹⁸

We could be part of a Kaitiakitanga Reference Group. But the Group would just be involved in monitoring the effects on the environment. We would get a closer look at how much damage to the environment has already occurred, but we wouldn’t be able to stop it. That isn’t kaitiakitanga. It doesn’t address any of the actual effects that harm our moana and breach our tikanga. As the DMC minority said at [177],

... these conditions do not avoid, remedy or mitigate potential adverse effects on the existing interests of tangata whenua. They merely enable tangata whenua to participate in monitoring effects.

⁹⁷ DMC decision, above n 1, at [350].

⁹⁸ Affidavit of Haimona Maruera at [67].

Again, this is about monitoring for information purposes, not for effectively addressing potential adverse effects.

Section 59(2)(l) of the EEZ Act – any other applicable law (other than EEZ policy statements)

99. The status and significance of tikanga as applicable law is addressed above at paragraphs 9 and 12.

Favouring caution and environmental protection

100. Section 61(2) of the EEZ Act requires decision-makers on a marine consent application to “favour caution and environmental protection” if “the information available is uncertain or inadequate”. This “recognise[s] that considerably less is known about the marine environment as opposed to the terrestrial environment.”⁹⁹
101. The Supreme Court said that the requirement to favour caution and environmental protection had a heightened effect in the case of discharge and dumping consents where the environmental bottom-line in s 10(b) applied.¹⁰⁰ Such consents could not be granted unless, taking a cautious approach and favouring environmental protection, the information was sufficient to establish that material harm will not occur.¹⁰¹
102. The requirement to favour caution and environmental protection is linked to another of the information principles in the Act: the requirement in s 61(1)(b) to “base decisions on the best available information”. Where the best available information is unavailable, that will increase uncertainty and engage the need to favour caution and environmental protection.¹⁰²
103. The Supreme Court found that the information in the TTR application about effects on seabirds, on marine mammals and from the sediment plume was uncertain.¹⁰³ Glazebrook J referred to “the almost total lack of information in this case on seabirds and marine mammals and the similar issues with the sediment plume and suspended sediment levels...”¹⁰⁴ William Young and Ellen France JJ noted that there were “extremely fine” margins

⁹⁹ At [105] per William Young and Ellen France JJ.

¹⁰⁰ At [274] per Glazebrook J, at [294] per Williams J, at [326] and [327] per Winkelmann CJ.

¹⁰¹ At [274] per Glazebrook J.

¹⁰² At [137] per William Young and Ellen France JJ,

¹⁰³ At [125] per William Young and Ellen France J, at [274] per Glazebrook J, at [294] per Williams J, at [328] per Winkelmann CJ.

¹⁰⁴ At [274] per Glazebrook J.

regarding effects on endangered marine mammals and seabirds, with potentially “extreme” outcomes where “a very small change in population could have a disastrous effect.”¹⁰⁵

104. These information deficits “could not legitimately be compensated for by conditions designed to collect the very information” that was needed to assess the effects of the application.¹⁰⁶ Nor could they be addressed by conditions that required no adverse effects on seabirds or marine mammals at a population level¹⁰⁷ or by deferring issues to management plans.¹⁰⁸
105. The panel in this case must consider the requirement to favour caution and environmental protection in s 61(2), since this is one of the provisions of the EEZ that the panel is required to take into account under cl 6 of sch 10.
106. Section 61(2) is not a substantive provision regarding adverse impacts that could be outweighed by the regional or national benefits of the project. Rather it is a provision that directs how the panel evaluates the likely impacts of the project, directing it to adopt a precautionary approach in the face of uncertainty. As such, it applies in the same way to a panel under the FTAA as it does to decision-makers under the EEZ Act. If uncertain or inadequate information prevents the panel from being able to properly evaluate the likely impacts of the activity, the panel can decline the application. This is acknowledged by TTR.¹⁰⁹

D. WHY THE APPLICATION MUST BE DECLINED

107. Section 85 sets out when a panel may or must decline an approval. There is no presumption that the panel should grant approval.

Section 85(1) – approval must be declined

108. The panel must decline an approval if the approval is for an ineligible activity¹¹⁰ or the panel considers that granted the approval would breach s 7 (regarding Treaty settlements and recognised customary rights).¹¹¹

¹⁰⁵ At [129] per William Young and Ellen France JJ.

¹⁰⁶ At [275] per Glazebrook J.

¹⁰⁷ At [129]-[131] per William Young and Ellen France JJ, at [275] per Glazebrook J. at [294] per Williams J, at [328] and [329] per Winkelmann CJ.

¹⁰⁸ At [129]-[131] per William Young and Ellen France JJ, at [275] per Glazebrook J. at [294] per Williams J, at [328] and [329] per Winkelmann CJ.

¹⁰⁹ TTR application at 322.

¹¹⁰ Fast-Track Approvals Act 2024, s 85(1)(a).

¹¹¹ Fast-Track Approvals Act 2024, s 85(1)(b).

109. Paragraphs 55-57 explain why approval of the project would be inconsistent with both the Ngāti Ruanui and the fisheries settlements, as well as potentially with the aquaculture settlement (given the inadequate information about impacts on Māori aquaculture).

110. Accordingly, s 85(1) requires the panel to decline the application.

Section 85(3) – approval should be declined

111. The panel may decline an approval if the panel forms the view that:¹¹²

- (a) there are 1 or more adverse impacts in relation to the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

112. This provision requires the panel to evaluate competing considerations that may be incommensurable. There is no simple way of measuring and weighing economic benefits against harm to sensitive ecosystems or threatened species, or against interference with customary interests protected by te Tiriti.

113. As such, the panel's task is to make an evaluative judgment. In this respect, it is not at all clear that the provision adds anything material to the consideration required by cl 6 sch 10 of the FTAA. If a panel considered all of the criteria set out in cl 6, properly gave greatest weight to the purpose of the FTAA, and then came to the conclusion that that purpose was still outweighed by the other factors, such that approval should not be granted, could it logically come to a different determination under s 85(3)?

114. The regional or national benefits must be proportionate to the adverse impacts. Even if a project has significant benefits, significant adverse effects may mean that it is not proportionate to grant approval.

¹¹² Fast-Track Approvals Act 2024, s 85(3).

115. The panel must consider adverse impacts cumulatively, rather than in isolation, in making this judgment. This follows from the references to “1 or more adverse impacts” and “those adverse impacts”.
116. While this ground is specified to be a reason why the panel may (rather than must) decline consent, in practice it is difficult to imagine reasons for a panel to grant approval when the benefits of the project were out of proportion to its adverse impacts.
117. The benefits of the project must be considered in terms of net benefits, rather than gross benefit. Otherwise a project with large gross benefits but no net benefit (since its costs outweighed its benefits) would be advantaged over a project with smaller gross benefits but substantial net benefits (since its costs were much lower). Parliament cannot have intended this: it would not promote the purpose of the FTAA of “facilitat[ing] the delivery of infrastructure and development projects with significant regional or national benefits.”
118. But even this self-evident fact raises issues. A true cost/benefit analysis, such as the Total Economic Value (TEV) approach, as promoted by Dr Ganesh Nana,¹¹³ would need to factor in such immeasurable costs as harm to the mauri of Te Moana A Kupe and its residents, both human and non-human, but all linked by whakapapa. Valuing the ecosystem services provided by a complex marine environment, and assessing the costs that TTR’s activities may have on them could be no less challenging.
119. Moreover, in the context of s 85(3), such a holistic approach would no doubt be challenged as ‘double-counting’ the disbenefits of any proposal, which should be treated as adverse impacts, to be weighed against benefits.
120. The issue does not arise here, however, as the panel is presented with relatively simplistic modelling of the supposed economic benefits of the proposal. Clearly there are unacknowledged costs which would need to be factored into that analysis in order to obtain a true picture of the net benefit.

¹¹³ Evidence of Dr Ganesh Nana, paragraph 57ff.

121. As Dr Nana discusses at paragraph 31 of his evidence, a key assumption of the multiplier model utilised by NZIER¹¹⁴ is that the project will result in “no (relative) price changes, arising from an assumption of no production supply constraints.” Dr Nana notes that this, and other assumptions and caveats are well stated in the NZIER report, but noticeably absent from section 5.2 of the TTR application.¹¹⁵
122. Dr Nana explains, at paragraph 44 of his evidence, the significance of this assumption as follows:

Consequently, there is a **significant contradiction** between the presentation provided in Section 5.2 [of the TTR application] and in that conveyed by the assessment of economic impacts using a multiplier model described in the NZIER report.

a. It cannot be claimed (or inferred) that the project will result in large economic impacts to the local, regional, or national area while also adhering to the assumptions and caveats that underpin the calculated economic impacts (that is, horizontal aggregate supply curves).

b. Alternatively, for the caveats and assumptions to hold – and so for the calculated multiplier impacts to be a valid representation of impact – the project must necessarily be relatively small.

i. Such small projects can therefore be assessed to cause little or noticeable impacts on other agents and enterprises in the industry and connected sectors /supply chain and neighbouring areas and regions and so leave relative prices unchanged.

ii. Such small projects can be similarly assessed to cause little or noticeable impacts that may result in production supply constraints and so changes in the prices of capital and labour resources.

c. The introduction of a *large* project to a locality, region, or nation, would – by definition of being *large* – not adhere to the caveats and assumptions of the multiplier model. Consequently, the **net** economic effect of such a project would certainly be less than the effectively **gross** estimates arising from a multiplier model.

(emphasis in original)

¹¹⁴ TTR application, Attachment 2, NZIER Economic impact assessment of TTRLs Taranaki VTM project report Analysis with updated inputs Mar 2025', section 2.2.

¹¹⁵ Evidence of Dr Ganesh Nana at paragraphs 31 and 42.

123. But even an assessment that moves from gross to net benefits will still leave a large number of unquantified adverse impacts to weigh on the other side of the scale.
124. It is the position of Ngāti Ruanui that these adverse impacts are clearly out of proportion to any benefits. Therefore, approval must be declined.

DATED: 6 October 2025



Counsel for Te Rūnanga o Ngāti Ruanui Trust